

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 731

Introduced by Hartnett, 45

Read first time January 17, 2001

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to elections; to amend sections 14-2104,
2 23-3534, 32-567 to 32-569, 32-571, and 85-1514, Reissue
3 Revised Statutes of Nebraska, and sections 32-570 and
4 79-1217, Revised Statutes Supplement, 2000; to change
5 provisions relating to vacancies in office; to harmonize
6 provisions; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 14-2104, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 14-2104. (1) Any vacancy occurring in the board of
4 directors of a metropolitan utilities district shall be filled ~~for~~
5 ~~the unexpired term~~ by the remaining members thereof within thirty
6 days after the vacancy occurs. It is the intent and purpose to
7 render the board of directors nonpartisan in character. If a
8 vacancy in the office occurs more than thirty days before a regular
9 primary election during the first half of the term of the office,
10 the appointee shall serve until a successor is elected at the next
11 regular general election to serve for the balance of the unexpired
12 term.

13 (2) Before entering upon their offices, members of the
14 board of directors shall give bond for the faithful performance of
15 their duties in the amount of five thousand dollars each. Before
16 the day fixed for assuming the duties of office, the bond shall be
17 filed with the secretary of the metropolitan utilities district and
18 be approved by the board of directors or by a judge of the district
19 court of the judicial district which includes the city of the
20 metropolitan class.

21 (3) The chairperson of the board of directors ~~of a~~
22 ~~metropolitan utilities district~~ shall be paid, as compensation for
23 his or her services, not to exceed the sum of nine hundred dollars
24 per month. Each of the other members of the board of directors
25 shall be paid, as compensation for his or her services, not to
26 exceed the sum of eight hundred dollars per month. Any adjustments
27 in compensation shall be made only at regular meetings of the board
28 of directors, and the salaries of the chairperson and other members

1 of such board shall not be increased more often than once in any
2 calendar year.

3 (4) The chairperson and other members of such board of
4 directors shall also be reimbursed for actual and necessary
5 expenses incurred in the performance of their official duties.

6 Sec. 2. Section 23-3534, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 23-3534. The elective officers of a local hospital
9 district shall be a board of directors consisting of five members.
10 The members of the first board shall be appointed by the county
11 board and shall be so appointed that two members shall serve terms
12 ending on the first Tuesday in June following the first statewide
13 primary election following the initial appointment, and three shall
14 serve terms ending on the first Tuesday in June following the
15 second statewide primary election following the initial
16 appointment.

17 Members shall be elected as provided in section 32-550.
18 All registered voters of this state who reside within the hospital
19 district on or before the day of the election shall be entitled to
20 vote in such hospital district election.

21 Any vacancy upon such board occurring other than by the
22 expiration of a term shall be filled by appointment by the
23 remaining members of the board of directors. ~~Any person appointed~~
24 ~~to fill such vacancy shall serve for the remainder of the unexpired~~
25 ~~term.~~ If a vacancy in the office occurs more than thirty days
26 before a regular primary election during the first half of the term
27 of the office, the appointee shall serve until a successor is
28 elected at the next regular general election to serve for the

1 balance of the unexpired term. If there are vacancies in the
2 offices of a majority of the members of the board, there shall be a
3 special election conducted by the Secretary of State to fill such
4 vacancies.

5 Sec. 3. Section 32-567, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 32-567. Vacancies in office shall be filled as follows:

8 (1) In state and judicial district offices and in the
9 membership of any board or commission created by the state when no
10 other method is provided, by the Governor;

11 (2) In county offices, by the county board;

12 (3) In the membership of the county board, by the county
13 clerk, county attorney, and county treasurer;

14 (4) In township offices, by the township board or, if
15 there are two or more vacancies on the township board, by the
16 county board;

17 (5) In offices in public power and irrigation districts,
18 according to section 70-615;

19 (6) In offices in natural resources districts, according
20 to section 2-3215;

21 (7) In offices in community college areas, according to
22 section 85-1514;

23 (8) In offices in educational service units, according to
24 section 79-1217;

25 (9) In offices in hospital districts, according to
26 section 23-3534;

27 (10) In offices in metropolitan utilities districts,
28 according to section 14-2104;

1 (11) In membership on airport authority boards, according
2 to section 3-502, 3-611, or 3-703, as applicable; and

3 (12) In membership on the board of trustees of a road
4 improvement district, according to section 39-1607.

5 Unless otherwise provided by law, all vacancies shall be
6 filled within forty-five days after the vacancy occurs unless good
7 cause is shown that the requirement imposes an undue burden.

8 Unless otherwise provided by law, all vacancies that
9 occur more than thirty days before a regular primary election
10 during the first half of the term of the office shall be filled by
11 temporary appointment and the appointee shall serve only until a
12 successor is elected at the next regular general election to serve
13 for the balance of the unexpired term.

14 Sec. 4. Section 32-568, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 32-568. (1) If any vacancy occurs in the office of city
17 council member of a city of the metropolitan class, the remaining
18 members of the council shall appoint a person to fill such vacancy
19 from the district in which the vacancy occurred for the remainder
20 of the term. The person thus appointed shall qualify and give bond
21 as by law provided for council members elected to such office. A
22 vacancy in the office of mayor of a city of the metropolitan class
23 shall be filled as provided by local law.

24 (2) The city council of a city of the primary class may
25 provide for filling any vacancies that occur in any elective office
26 by appointment by the mayor, with the advice and consent of the
27 council, to hold office until the next general city election. In
28 case of vacancy in the office of mayor of a city of the primary

1 class or his or her absence or disability, the president of the
2 council shall exercise the powers and duties of the office until
3 such vacancy is filled or disability removed or, in case of
4 temporary absence, until the mayor returns, and such acting mayor
5 shall perform such other duties as may be required by law.

6 (3) In a city of the first class except a city which has
7 adopted the commissioner or city manager plan of government, any
8 vacancy on the council resulting from causes other than expiration
9 of the term shall be filled by appointment by the mayor with the
10 consent of the city council. If a vacancy in the office occurs
11 more than thirty days before a regular primary election during the
12 first half of the term of the office, the appointee shall serve
13 until a successor is elected at the next regular general election
14 to serve for the balance of the unexpired term. ~~to hold office for~~
15 ~~the remainder of the term.~~ When there is a vacancy in the office
16 of the mayor in a city of the first class, the president of the
17 city council shall serve as mayor. If a vacancy in the office of
18 mayor occurs more than thirty days before a regular primary
19 election during the first half of the term of the office, the
20 president of the city council shall serve until a successor is
21 elected at the next regular general election to serve for the
22 balance of the unexpired term. ~~for the unexpired term.~~ In case of
23 any vacancy in the office of mayor, or in case of his or her
24 absence or disability, the president of the council shall exercise
25 the powers and duties of the office of mayor until such vacancy
26 shall be filled or such disability removed, or in case of temporary
27 absence until the mayor returns, and shall perform such other
28 duties as may be required by law.

1 (4) Any vacancy on the city council of a city of the
2 second class shall be filled as provided in section 32-569. In the
3 case of any vacancy in the office of mayor, or in case of his or
4 her disability or absence, the president of the council shall
5 exercise the office of mayor for the unexpired term until such
6 vacancy is filled or such disability is removed, or in case of
7 temporary absence, until the mayor returns. If the president of
8 the council assumes the office of mayor for the unexpired term,
9 there shall be a vacancy on the council.

10 (5) A vacancy on the board of trustees of a village shall
11 be filled as provided in section 32-569, except that the board of
12 trustees of a village situated in more than one county shall have
13 power to fill by appointment any vacancy that may occur in their
14 number.

15 (6) If any vacancy occurs in the office of council member
16 in a city under the commission plan of government, the vacancy
17 shall be filled as provided in section 32-569. If an incumbent in
18 a city under the commission plan of government files for a city
19 office other than the office he or she holds, the office he or she
20 holds shall become vacant as of the date of the commencement of the
21 term of the office for which he or she has filed. If such vacancy
22 results in an unexpired term, such vacancy shall be filled by
23 election for the remainder of the unexpired term. In a city under
24 the commission plan of government, the vice president of the city
25 council shall perform the duties of the mayor of the city in the
26 absence or inability of the mayor to serve. If a vacancy occurs in
27 the office of mayor by death or otherwise, the vice president shall
28 perform the duties of mayor of the city until such time as the

1 council shall fill such vacancy, which shall be done at the first
2 council meeting after such vacancy occurs or as soon thereafter as
3 may be practicable.

4 (7) If a vacancy occurs in the office of council member
5 in a city under a city manager plan, a successor council member
6 shall be elected at the next regular city election to serve for the
7 remainder of the term, except that a majority of the remaining
8 members of the council shall appoint a registered voter to serve as
9 council member until the successor is so elected and has qualified.
10 If the council members are elected by ward, the council member
11 elected or appointed to fill the vacancy shall be a registered
12 voter of the ward in which the vacancy exists. If for any reason
13 the seats of a majority of the council become vacant, the Secretary
14 of State shall conduct a special election to fill the vacancies for
15 the unexpired portion of each term. A vacancy in any office to
16 which the council elects shall be filled by the council for the
17 unexpired term.

18 (8) Vacancies in city offices in any city under home rule
19 charter shall be filled as provided in the home rule charter.

20 Sec. 5. Section 32-569, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 32-569. (1)(a) Except as otherwise provided in
23 subsection (2) ~~or (3)~~ of this section or section 32-568, vacancies
24 in city and village elected offices shall be filled by the mayor
25 and council or board of trustees for the balance of the unexpired
26 term unless notice of the vacancy is given as provided in this
27 section or the death occurs more than thirty days before a regular
28 primary election during the first half of the term of the office,

1 in which case the appointee shall serve until a successor is
2 elected at the next regular general election to serve for the
3 balance of the unexpired term. Notice of a vacancy, except a
4 vacancy resulting from the death of the incumbent, shall be in
5 writing and presented to the council or board of trustees at a
6 regular or special meeting and shall appear as a part of the
7 minutes of such meeting. The council or board of trustees shall at
8 once give public notice of the vacancy by causing to be published
9 in a newspaper of general circulation within the city or village or
10 by posting in three public places in the city or village the office
11 vacated and the length of the unexpired term.

12 (b) ~~The~~ If time allows before the expiration of the term
13 or the regular primary election, the mayor or chairperson of the
14 board shall, within four weeks after the meeting at which such
15 notice of vacancy has been presented or upon the death of the
16 incumbent, call a special meeting of the council or board of
17 trustees or place the issue of filling such vacancy on the agenda
18 at the next regular meeting at which time the mayor or chairperson
19 shall submit the name of a qualified registered voter to fill the
20 vacancy for the balance of the unexpired term. The council or
21 board of trustees shall vote upon such nominee, and if a majority
22 votes in favor of such nominee, the vacancy shall be declared
23 filled. If the nominee fails to receive a majority of the votes,
24 the nomination shall be rejected and the mayor or chairperson shall
25 at the next regular or special meeting submit the name of another
26 qualified registered voter to fill the vacancy. If the subsequent
27 nominee fails to receive a majority of the votes, the mayor or
28 chairperson shall continue at such meeting to submit the names of

1 qualified registered voters in nomination and the council or board
2 of trustees shall continue to vote upon such nominations until the
3 vacancy is filled. The mayor shall cast his or her vote for or
4 against the nominee in the case of a tie vote of the council. All
5 council members and trustees present shall cast a ballot for or
6 against the nominee. Any member of the city council or board of
7 trustees who has been appointed to fill a vacancy on the council or
8 board shall have the same rights, including voting, as if such
9 person were elected.

10 (2) ~~The mayor and council or chairperson and board of~~
11 ~~trustees may, in lieu of filling a vacancy in a city or village~~
12 ~~elected office as provided in subsection (1) of this section or~~
13 ~~subsection (3) of section 32-568, call a special city election to~~
14 ~~fill such vacancy.~~

15 ~~(3)~~ If vacancies exist in the offices of a majority of
16 the members of a city council or village board, the Secretary of
17 State shall conduct a special city election to fill such vacancies.

18 Sec. 6. Section 32-570, Revised Statutes Supplement,
19 2000, is amended to read:

20 32-570. (1) A vacancy in the membership of a school
21 board shall occur as set forth in section 32-560 or when a member
22 is absent from the district for a continuous period of sixty days
23 at one time or from more than two consecutive regular meetings of
24 the board unless excused by a majority of the remaining members of
25 the board.

26 (2) A person appointed to fill a vacancy on the school
27 board of a Class I school district by the remaining members of the
28 board shall hold office until the beginning of the next school

1 year. A board member of a Class I school district elected to fill
2 a vacancy at a regular or special school district meeting shall
3 serve for the remainder of the unexpired term or until a successor
4 is elected and qualified.

5 (3) Except as provided in subsection (4) of this section,
6 a vacancy in the membership of a school board of a Class II, III,
7 IV, V, or VI school district resulting from any cause other than
8 the expiration of a term shall be ~~temporarily~~ filled by appointment
9 of a qualified registered voter by the remaining members of the
10 board. A registered voter shall be nominated at the next primary
11 election and elected at the following general election for the
12 ~~remainder of the unexpired term.~~ Such appointment shall be
13 temporary if the vacancy occurs more than thirty days before a
14 regular primary election during the first half of the term of the
15 office, otherwise the appointment shall be for the remainder of the
16 term. If the vacancy occurs more than thirty days before a regular
17 primary election during the first half of the term of the office,
18 the appointee shall serve until a successor is elected at the next
19 regular general election to serve for the balance of the unexpired
20 term. A registered voter appointed or elected pursuant to this
21 subsection shall meet the same requirements as the member whose
22 office is vacant.

23 (4) Any vacancy in the membership of a school board of a
24 school district which does not nominate candidates at a primary
25 election and elect members at the following general election shall
26 be temporarily filled by appointment of a qualified registered
27 voter by the remaining members of the board. A registered voter
28 shall be nominated and elected to fill the vacancy for the

1 remainder of the term in the manner provided for nomination and
2 election of board members in the district.

3 (5) If any school board fails to fill a vacancy on the
4 board, the vacancy may be filled by election at a special election
5 or school district meeting called for that purpose. Such election
6 or meeting shall be called in the same manner and subject to the
7 same procedures as other special elections or school district
8 meetings.

9 (6) If there are vacancies in the offices of a majority
10 of the members of a school board, the Secretary of State shall
11 conduct a special school district election to fill such vacancies.

12 Sec. 7. Section 32-571, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 32-571. Appointments made pursuant to sections 32-564 to
15 32-570 shall be in writing. ~~and shall continue for the unexpired~~
16 ~~term and until a successor is elected and qualified except as~~
17 ~~otherwise provided in such sections.~~ The written appointment shall
18 be filed with the Secretary of State or county or township clerk.
19 No person shall be appointed to fill a vacancy unless he or she has
20 the qualifications required to be elected to such office at the
21 time of the appointment unless otherwise specifically provided.

22 Sec. 8. Section 79-1217, Revised Statutes Supplement,
23 2000, is amended to read:

24 79-1217. (1) Each educational service unit shall be
25 governed by a board to be known as the Board of Educational Service
26 Unit No. The educational service unit board shall be
27 composed of one member from each county and four members at large,
28 all of whom shall reside within the geographical boundaries of the

1 educational service unit, but no more than two of the members at
2 large shall be appointed or elected from the same county unless any
3 one county within the educational service unit has a population in
4 excess of one hundred fifty thousand inhabitants or the educational
5 service unit consists of only one county. Successors to the
6 members initially appointed shall be elected pursuant to section
7 32-515.

8 (2) Vacancies in office shall occur as set forth in
9 section 32-560. Whenever any vacancy occurs on the board, the
10 remaining members of such board shall appoint an individual
11 residing within the geographical boundaries of the educational
12 service unit to fill such vacancy. If a vacancy in the office
13 occurs more than thirty days before a regular primary election
14 during the first half of the term of the office, the appointee
15 shall serve until a successor is elected at the next regular
16 general election to serve for the balance of the unexpired term.
17 ~~for the balance of the unexpired term.~~

18 (3) Members of the board shall receive no compensation
19 for their services but shall be reimbursed for the actual and
20 necessary expenses incurred in the performance of their duties
21 under the Educational Service Units Act as provided in sections
22 81-1174 to 81-1177.

23 (4) Except as provided in subsection (5) of this section,
24 any local joint school district located in two or more counties
25 shall be considered a part of the educational service unit in which
26 the greater number of school-age children of such joint school
27 district reside. All legal voters of any such joint school
28 district shall be eligible to hold office as the county

1 representative of the county in which the greater number of
2 school-age children reside. Any legal voter of any joint school
3 district shall be eligible to hold office as the at-large
4 representative if such legal voter resides within the geographical
5 boundary of the school district comprising the educational service
6 unit.

7 (5) Any Class I district which is part of a Class VI
8 district shall be considered a part of the educational service unit
9 of which the Class VI district is a member. If the Class VI
10 district has removed itself from an educational service unit, each
11 Class I district which is part of such Class VI district may
12 continue its existing membership in an educational service unit or
13 may change its status relative to membership in an educational
14 service unit in accordance with section 79-1209. The patrons of a
15 Class I district maintaining membership in an educational service
16 unit pursuant to this subsection shall have the same rights and
17 privileges as other patrons of the educational service unit, and
18 the taxable valuation of the taxable property within the geographic
19 boundaries of such Class I district shall be subject to the
20 educational service unit's tax levy established pursuant to section
21 79-1225.

22 (6) The administrator of each educational service unit,
23 prior to July 1 of each year in which a statewide primary election
24 is to be held, shall certify to the election commissioner or county
25 clerk of each county located within the unit the corporate name of
26 each school district, as described in section 79-405, located
27 within the county. If a school district is a joint school district
28 located in two or more counties, the administrator shall certify to

1 each election commissioner or county clerk the educational service
2 unit of which the school district is considered to be a part.

3 Sec. 9. Section 85-1514, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 85-1514. (1) In addition to the events listed in section
6 32-560, a vacancy on any board shall exist in the event of the
7 removal of a board member from the community college area for board
8 members elected at large or community college district for board
9 members elected by district. After notice and hearing, a vacancy
10 shall also exist when any board member is absent from more than
11 three consecutive regular meetings of the board unless such
12 absences are excused by a majority of the remaining board members.
13 In the event of a vacancy from any of such causes or otherwise,
14 such vacancy shall be filled by the remaining board members. ~~for~~
15 ~~the balance of the unexpired term.~~ Any person so named to fill a
16 vacancy shall have the same qualifications as his or her immediate
17 predecessor. Such appointment shall be made in writing and
18 certified to the office of the Secretary of State. If a vacancy in
19 the office occurs more than thirty days before a regular primary
20 election during the first half of the term of the office, the
21 appointee shall serve until a successor is elected at the next
22 regular general election to serve for the balance of the unexpired
23 term.

24 (2) If after ~~an~~ a primary election there is a vacancy
25 upon the ballot, such vacancy shall be filled by a petition
26 candidate pursuant to section 32-625.

27 (3) An incumbent shall not be permitted to hold over the
28 term, but such office shall automatically become vacant and an

1 appointment shall be made within one calendar month to fill such
2 vacancy. The appointee shall serve until a successor is elected at
3 the next regular general election to serve for the balance of the
4 unexpired term. for the ensuing term. If there are vacancies in
5 the offices of a majority of the members of the board, the
6 Secretary of State shall conduct a special election to fill such
7 vacancies.

8 Sec. 10. Original sections 14-2104, 23-3534, 32-567 to
9 32-569, 32-571, and 85-1514, Reissue Revised Statutes of Nebraska,
10 and sections 32-570 and 79-1217, Revised Statutes Supplement, 2000,
11 are repealed.